

**REMARKS**

Reconsideration of this application is requested. Claims 1-11 and 15-22 remain active in the application subsequent to entry of this amendment.

The claims have been amended in order to more particularly point out and distinctly claim that which applicants regard as their invention and to respond to the issues presented on page 2 of the Official Action. More specifically, claims 2, 3, 6, 15, 16, and 18 have been amended to adopt "said first" and "said second" as suggested by the examiner. Claim 19 is amended to refer to administering the combination of lactic acid bacteria to a subject in need thereof (subjects are mentioned in example 2, page 9 last paragraph), the subject being in need of prophylaxis or treatment of an inflammatory condition. This will be apparent from examples 2 and 3 taken with the description at page 2 lines 3-6 as well as the specific indications mentioned in the paragraph bridging pages 4 and 5.

With regard to the wording of the preamble of claim 19, the claim is correct as presented -- the method is directed to either prophylaxis (preventing) or treating infections or inflammatory conditions caused by bacteria, virus or fungi.

It is respectfully submitted that the claims as above amended are clear and compliant with 35 USC §112, second paragraph.

Claims 1-11 and 15-22 have attracted a rejection based upon two newly cited documents U.S. 6,277,370 to Vesely (and DeSimone, applicant herein) in combination with U.S. 6,159,724 to Ehret. This rejection is respectfully traversed.

This response will focus upon the combination of the two documents cited, primarily to the Ehret reference and, for purposes of the discussion, the Vesely et al. patent assuming, for the sake of response, that it is available as prior art.

Applicants' claims are directed to methods of preventing or treating infectious or inflammatory conditions caused by bacteria, virus or fungi as well as combinations of

peroxide-producing lactic acid bacteria with strains of arginine-utilizing lactic acid bacteria.

The Ehret reference has nothing to do with the intent of the present applicant and instead is concerned with culturing yeasts such as baker's yeast used in the baking process. This is made clear in the background of the invention discussion of the citation at lines 15-29. Specifically, this reference is concerned with "panification" and production of sponge in association with cereal products, such as in bread making.

The Ehret reference is absolutely foreign to the present invention. The examiner noted that the *L. brevis* disclosed by Ehret utilizes arginine. But it should also be noted that the Ehret reference is in a different technical field, namely panification. As far as applicant is aware, there is no knowledge in the art that bread can be used to treat disorders or diseases.

The Ehret reference gives no suggestions on the use of an arginine utilizing lactic acid bacteria in combination with an H<sub>2</sub>O<sub>2</sub> producing lactic acid bacterium to obtain a synergistic effect on inhibition of pathogenic agent growth as explained in the Amendment of October 2, 2002.

Further, Ehret does not provide information which is reasonably pertinent to the particular problem with which the inventor was involved.

"A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering this problem." *In re Clay*, 966 F.2d at 659, 23 U.S.P.Q.2d at 1061.

As explained above, applicants set out to solve a particular problem in the art. In determining motivation to combine prior art references the nature of the problem to be solved must be taken into account as the Federal Circuit restated in *In re Rouffet*, 47 U.S.P.Q.2d 1453 at 1458 (July 1998) where the court noted:

"In other words the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed."

For these reasons, the combination of documents is inappropriate and a *prima facie* case of obviousness has not been established. Reconsideration is requested.

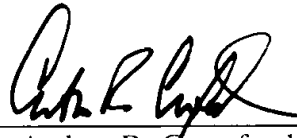
The Official Action also includes an obviousness-type double patenting rejection over claims 1-8 of the Vesely et al. reference taken in view of Ehret. For reasons explained above, there is no "obviousness" between the claims of the present application and either of the two documents cited or their combination. In fact, the combination is illogical and incorrect, hence there is no valid ground supporting this rejection.

For the above reasons it is respectfully submitted that the claims of this application define inventive subject matter. Reconsideration and allowance are solicited.

Respectfully submitted,

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